



CARDIFF
BROADCASTING
GROUP

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 15, 1993

92-297 /

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Comments to RM-7872; RM-7722

To Whom It May Concern:

Set forth below are the comments of Cardiff Broadcasting Group with respect to the Notice of Proposed Rule Making adopted December 10, 1992 with respect to the 28GHz Band redesignation from point to point microwave, carrier service to a local multipoint distribution service.

1. Cardiff Broadcasting Group agrees with the following proposals:

A. Spectrum should be allocated into two blocks of 1,000 MHz each; we believe this is the preferable alternative to foster the expected competition;

B. The winners of the spectrum allocation should be entitled to a elect carrier versus non-common carrier status;

C. Cardiff believes the allocation of proposed markets based upon the 487 Basic Trading Areas (BTA's) is too large, particularly in light of the proposed time frame within which construction of the system and service availability must be accomplished under the proposed rules.

D. Cardiff agrees with the proposal for no settlements.

E. Cardiff agrees generally with the attempts by the Commission to eliminate the possibility of application mills becoming involved in the lottery process of the 28GHz Spectrum. Cardiff questions, however, the use of a letter perfect standard in light of the objective to preclude the viability of application mills. It would appear that an application mill would have a greater incentive to make sure that their applications were "letter perfect" as the cost would be amortized over numerous applicants. Alternatively, a legitimate and vialable solo applicant will have

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to incur all of the costs of a letter perfect application and, because of time or monetary constraints, risk rejection for a non-material and arguably ministerial error. Accordingly, we would disagree with the use of the letter perfect standard. We do agree with the process of reviewing an application after a lottery, as we believe that will expedite the entire process.

F. We do agree with the limitations of one application per market and with the requirement for a strong and credible financial capability standard.

G. We agree with the proposed fee structure and with the proposed one day filing windows subject to a limitation that the markets would not be offered sequentially in the order of their ranking - e.g. the top five markets would not be followed by six through ten and then followed by market eleven through sixteen, etc. We believe it would be a more manageable process to select several markets from different groups so that the flow of applications would generally be equal for each filing date.

H. Cardiff strongly agrees with denial of all pending applications for grants of waivers for 28GHz licenses. As we iterated in previous unsolicited comments mailed to the Commissioners and their staff, we feel that to take any other action would unfairly reward those who did not "play by the rules". Correspondingly, any change of position by the FCC would penalize those who did await the proposed rule making (which is the subject of these comments) prior to attempting to file applications in any market. We are aware that arguments may be made to the Commission that in certain markets only two mutually exclusive applicants filed for 28GHz licenses and that each filed for an alternative 1,000 GHz group. To accept such an argument would be a travesty of the logic supporting the proposed rejection of the pending applications. Once again, it is incomprehensible that other applicants would not have filed had they thought that there was any opportunity to be granted a license under prior rules. It is much more likely that in light of previous statements from the Commission regarding an intent not to grant numerous waivers, that prospective applicants chose to wait for the applicable change in rules prior to filing applications in various markets. We strongly hope that the Commission will stand by its position rejecting all pending applications for 28GHz licenses;

I. We agree that rules should provide maximum flexibility for licensees to construct communication systems in which the public is interested and, agree that the band not be limited to video service only;

J. We agree that LMDS operators electing common carrier status be classified as "non-dominant" carriers and subject to streamlined tariff regulations as with MMDS.

K. We agree that to the extent such systems provide video entertainment programming that state entry and rate regulations should be preempted.

L. We agree with the license term of ten years.

2. Cardiff disagrees with the following rules:


A. We disagree with the Commission's position not to adopt cross ownership restrictions. Allowing cross ownership will limit for all practical purposes the potential operators of 28GHz service to either cable companies or telcos. We do not believe that limiting the potential operator base to two already entrenched services will foster the kind of competition the Commission and Congress desire. Cardiff does not believe that there should be any possibility of cross ownership as that will defeat the purpose of attempting to foster true competition in the given markets. It would also appear to thwart the congressional mandate of the Cable Act of 1992;

B. We disagree with the proposal that within the service area and within a three year time frame, the LMDS operator provide service to 90% of the population within such area. Our disagreement with this proposed rule is subject to change in the event that the proposed service areas are smaller than the suggested BTA's.

Thank you for your attention to this matter.

Very truly yours,

CARDIFF BROADCASTING GROUP

By: 
Michael W. Thompson,
Executive Vice President

MWT:dg